

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAB PRODUCE, INC.
2404 S. Wolcott Avenue, Suite 23
Chicago, Illinois 60608
(312) 226-7805

Plaintiff

v.

BIMEX, INC. a/t/a
Roselle International Food Market
825 East Nerge
Roselle, Illinois 60172
(630) 893-5128

MIROSLAW KUBAS
4900 W. Henderson Street
Chicago, Illinois 60641
(773) 545-3394

WOJCIECH DZIEWONSKI
8015 O'Connor Drive
River Grove, Illinois 60171
(708) 452-7058

KAZIMIERZ KONIARCZYK
1930 N Harlem Avenue
Elmwood Park, Illinois 60707
(708) 453-0904

and

ZBIGNIEW KRUCZALAK
1501 W. Erie Street
Chicago, Illinois 60622
(312) 243-5125

Defendants.

Civil Action No. FILED: APRIL 2, 2008
08CV1899 RCC
JUDGE SHADUR
MAGISTRATE JUDGE DENLOW

COMPLAINT
(To Enforce Payment From Produce Trust)

JAB Produce, Inc. ("JAB"), for its complaint against defendants, Bimex, Inc. a/t/a Roselle International Food Market, Mirosław Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczałak, alleges:

JURISDICTION AND VENUE

1. Subject matter jurisdiction is based on Section 5(c)(5) of the Perishable Agricultural Commodities Act, 7 U.S.C. §499e(c)(5) (hereafter "the PACA"), 28 U.S.C. §1331 and 28 U.S.C. §2201.

2. Venue in this District is based on 28 U.S.C. §1391 in that (a) plaintiff's claims arose in this District and (b) defendants reside in this District.

PARTIES

3. Plaintiff, JAB, an Illinois corporation with its principal place of business in Chicago, Illinois, is engaged in the business of buying and selling wholesale quantities of perishable agricultural commodities (hereafter "produce") in interstate commerce and was at all times pertinent herein, a dealer subject to and licensed under the provisions of the PACA as a dealer.

4. a. Defendant, Bimex, Inc. a/t/a Roselle International Food Market ("Roselle"), an Illinois corporation with a principal place of business in Roselle, Illinois, is also engaged in the business of buying and selling wholesale quantities of produce in interstate commerce and was at all times pertinent herein, a dealer subject to license under the provisions of the PACA as a dealer.

b. Defendant, Mirosław Kubas, upon information and belief, is an owner, officer, and director of Roselle, during the period of time in question who controlled the day to day operations of Roselle and was in a position of control over the PACA trust assets belonging to plaintiff.

c. Defendant, Wojciech Dziwonski, upon information and belief, is an owner, officer, and director of Roselle, during the period of time in question who controlled the day to day operations of Roselle and was in a position of control over the PACA trust assets belonging to plaintiff.

d. Defendant, Kazimierz Koniarczyk, upon information and belief, is an owner, officer, and director of Roselle, during the period of time in question who controlled the day to day operations of Roselle and was in a position of control over the PACA trust assets belonging to plaintiff.

e. Defendant, Zbigniew Kruczalak, upon information and belief, is an owner, officer, and director of Roselle, during the period of time in question who controlled the day to day operations of Roselle and was in a position of control over the PACA trust assets belonging to plaintiff.

GENERAL ALLEGATIONS

5. This action is brought to obtain declaratory relief and to enforce the trust provisions of P.L. 98-273, the 1984 amendment to Section 5 of the PACA, 7 U.S.C. § 499e(c).

6. Between June 25, 2007 and July 30, 2007, plaintiff JAB sold and delivered to defendant Roselle, in interstate commerce, \$8,205.00 worth of wholesale quantities of produce of which \$8,205.00 remains unpaid. An itemized statement of account is attached hereto as Exhibit 1.

7. Defendants accepted the produce from plaintiff.

8. At the time of receipt of the produce, plaintiff became a beneficiary in a statutory trust designed to assure payment to produce suppliers. The trust

consists of all produce or produce-related assets, including all funds commingled with funds from other sources and all assets procured by such funds, in the possession or control of defendants since the creation of the trust.

9. Plaintiff preserved its interest in the PACA trust in the amount of \$8,205.00 and remains a beneficiary until full payment is made for the produce. A sampling of Plaintiff's invoices, which are voluminous, with the trust language required by 7 U.S.C. 499e(c)(4) to preserve trust benefits, is attached hereto as Exhibit 2. All of Plaintiff's invoices contain the requisite statutory language to preserve trust benefits.

10. Despite demand for payment, Defendants have failed and refuse to pay plaintiff for the wholesale quantities of produce supplied by plaintiff, and have advised plaintiff they are unable to do so.

11. The failure, refusal, and admitted inability to make payment to plaintiff indicates that Roselle is failing to maintain sufficient assets in the statutory trust to pay plaintiff and is dissipating trust assets.

Count 1

(Failure to Pay Trust Funds)

12. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 11 above as if fully set forth herein.

13. The failure of defendant Roselle to make payment to plaintiff of trust funds in the aggregate amount of \$8,205.00 from the statutory trust is a violation of PACA and PACA regulations, and is unlawful.

WHEREFORE, plaintiff requests an order enforcing payment from the trust by requiring immediate payment to plaintiff from defendant Roselle in the amount of \$8,205.00, and such other and further relief as the Court deems necessary and appropriate.

Count 2

(Failure to Pay For Goods Sold)

14. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 13 above as if fully set forth herein.

15. Defendant Roselle failed and refused to pay plaintiff the amount of \$8,205.00 owed to plaintiff for produce received by defendant from plaintiff.

WHEREFORE, plaintiff requests judgment in favor of JAB, and against defendant Roselle, in the amount of \$8,205.00, and for such other and further relief as the Court deems necessary and appropriate.

Count 3

(Unlawful Dissipation of Trust Assets by
a Corporate Official – Miroslaw Kubas)

16. Plaintiff incorporates each and every allegation set forth in paragraph 1 to 15 above as if fully set forth herein.

17. Defendant, Miroslaw Kubas, is an owner, officer and director of Roselle who operated Roselle during the period of time in question and who was in a position of control over the PACA trust assets belonging to plaintiff.

18. Defendant, Miroslaw Kubas, failed to direct Roselle to fulfill its statutory duties to preserve PACA trust assets and pay plaintiff for the produce supplied.

19. Defendant, Miroslaw Kubas' failure to direct Roselle to maintain PACA trust assets and pay plaintiff for the produce supplied was an unlawful dissipation of trust assets by a corporate official.

20. As a result of said unlawful dissipation of trust assets, plaintiff has been deprived of its rights as a beneficiary in the produce trust and has been denied payment for the produce supplied.

WHEREFORE, plaintiff requests judgment against defendant, Miroslaw Kubas, in favor of plaintiff, JAB, in the amount of \$8,205.00, plus such other and further relief as the Court deems necessary and appropriate.

Count 4

(Unlawful Dissipation of Trust Assets by
a Corporate Official – Wojciech Dziewonski)

21. Plaintiff incorporates each and every allegation set forth in paragraph 1 to 20 above as if fully set forth herein.

22. Defendant, Wojciech Dziewonski, is an owner, officer and director of Roselle who operated Roselle during the period of time in question and who was in a position of control over the PACA trust assets belonging to plaintiff.

23. Defendant, Wojciech Dziewonski, failed to direct Roselle to fulfill its statutory duties to preserve PACA trust assets and pay plaintiff for the produce supplied.

24. Defendant, Wojciech Dziewonski's failure to direct Roselle to maintain PACA trust assets and pay plaintiff for the produce supplied was an unlawful dissipation of trust assets by a corporate official.

25. As a result of said unlawful dissipation of trust assets, plaintiff has been deprived of its rights as a beneficiary in the produce trust and has been denied payment for the produce supplied.

WHEREFORE, plaintiff requests judgment against defendant, Wojciech Dziewonski, in favor of plaintiff, JAB, in the amount of \$8,205.00, plus such other and further relief as the Court deems necessary and appropriate.

Count 5

(Unlawful Dissipation of Trust Assets by
a Corporate Official – Kazimierz Koniarczyk)

26. Plaintiff incorporates each and every allegation set forth in paragraph 1 to 25 above as if fully set forth herein.

27. Defendant, Kazimierz Koniarczyk, is an owner, officer and director of Roselle who operated Roselle during the period of time in question and who was in a position of control over the PACA trust assets belonging to plaintiff.

28. Defendant, Kazimierz Koniarczyk, failed to direct Roselle to fulfill its statutory duties to preserve PACA trust assets and pay plaintiff for the produce supplied.

29. Defendant, Kazimierz Koniarczyk's failure to direct Roselle to maintain PACA trust assets and pay plaintiff for the produce supplied was an unlawful dissipation of trust assets by a corporate official.

30. As a result of said unlawful dissipation of trust assets, plaintiff has been deprived of its rights as a beneficiary in the produce trust and has been denied payment for the produce supplied.

WHEREFORE, plaintiff requests judgment against defendant, Kazimierz

Koniarczyk, in favor of plaintiff, JAB, in the amount of \$8,205.00, plus such other and further relief as the Court deems necessary and appropriate.

Count 6

(Unlawful Dissipation of Trust Assets by
a Corporate Official – Zbigniew Kruczalak)

31. Plaintiff incorporates each and every allegation set forth in paragraph 1 to 30 above as if fully set forth herein.

32. Defendant, Zbigniew Kruczalak, upon information and belief, is an owner, officer and director of Roselle who operated Roselle during the period of time in question and who was in a position of control over the PACA trust assets belonging to plaintiff.

33. Defendant, Zbigniew Kruczalak, failed to direct Roselle to fulfill its statutory duties to preserve PACA trust assets and pay plaintiff for the produce supplied.

34. Defendant, Zbigniew Kruczalak's failure to direct Roselle to maintain PACA trust assets and pay plaintiff for the produce supplied was an unlawful dissipation of trust assets by a corporate official.

35. As a result of said unlawful dissipation of trust assets, plaintiff has been deprived of its rights as a beneficiary in the produce trust and has been denied payment for the produce supplied.

WHEREFORE, plaintiff requests judgment against defendant, Zbigniew Kruczalak, in favor of plaintiff, JAB, in the amount of \$8,205.00, plus such other and further relief as the Court deems necessary and appropriate.

Count 7

(Interest and Attorneys Fees)

36. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 35 above as if fully set forth herein.

37. As a result of defendants' failure to make full payment promptly of the amount of \$8,205.00, plaintiff has lost the use of said money.

38. As a further result of defendants' failure to make full payment promptly of \$8,205.00, plaintiff has been required to pay attorney's fees and costs in order to bring this action to require defendants to comply with their statutory duties.

39. PACA and the invoices of plaintiff JAB entitle plaintiff JAB to recover prejudgment interest at a rate of 1.5% per month and attorney's fees incurred to collect any balance due from defendants.

WHEREFORE, plaintiff requests judgment against each of the defendants, jointly and severally, for prejudgment interest, costs and attorneys fees.

Dated this 2nd day of April, 2008.

McCARRON & DIESS

LAW OFFICES OF WILLIAM B. KOHN

By: s/Mary Jean Fassett

Mary Jean Fassett, ID#9078552
4900 Massachusetts Ave., N.W.
Suite 310
Washington, DC 20016
(202) 364-0400
(202) 364-2731 – fax
mjf@mccarronlaw.com

By: s/William B. Kohn

William B. Kohn
150 N. Wacker Drive
Suite 1400
Chicago, Illinois 60606
(312) 553-1200
(312) 553-1733 – fax
kohn@wbkohnlaw.com

Attorneys for Plaintiff

JUDGE SHADUR
MAGISTRATE JUDGE DENLOW

EXHIBIT "1"

03/31/08

JAB Produce, Inc.
Accounts Receivable Detail

Page: 1

Customer: R6305, BIMEX INC./ ROSELLE INTL

Phone#

Date	Ticket #	Code	Amount	Paid	Credit	Balance
06/25/07	614312	DI	382.00	68.50	0.00	313.50
06/29/07	615373	DI	485.00	0.00	0.00	485.00
06/29/07	615374	DI	29.00	0.00	0.00	29.00
06/29/07	615401	DI	40.00	0.00	0.00	40.00
07/02/07	615815	DI	376.00	0.00	0.00	376.00
07/02/07	615852	DI	584.50	0.00	0.00	584.50
07/02/07	615858	DI	40.00	0.00	0.00	40.00
07/06/07	616648	DI	981.50	0.00	100.00	881.50
07/06/07	616657	DI	12.00	0.00	0.00	12.00
07/06/07	616732	DI	93.50	0.00	0.00	93.50
07/09/07	617168	DI	794.00	0.00	0.00	794.00
07/09/07	617231	DI	44.00	0.00	0.00	44.00
07/13/07	618285	DI	648.00	0.00	0.00	648.00
07/16/07	618648	DI	476.75	0.00	0.00	476.75
07/20/07	619781	DI	886.50	0.00	0.00	886.50
07/20/07	619816	DI	31.00	0.00	0.00	31.00
07/20/07	619820	DI	87.00	0.00	0.00	87.00
07/20/07	619837	DI	90.00	0.00	0.00	90.00
07/25/07	620486	DI	1114.75	0.00	0.00	1114.75
07/27/07	621262	DI	532.00	0.00	0.00	532.00
07/27/07	621306	DI	42.00	0.00	0.00	42.00
07/30/07	621624	DI	604.00	0.00	0.00	604.00
Current		3 Days	10 Days	24 Days	Over 31	Total
0.00		0.00	0.00	0.00	8205.00	8205.00

08CV1899
JUDGE SHADUR
MAGISTRATE JUDGE DENLOW

EXHIBIT "2"

JAB PRODUCE, INC.

"Top Quality Wholesale Produce"

2404 South Wolcott, Unit 23 Chicago, Illinois 60608
Phone (312) 226-7805 (312) 226-5154

Invoice: 614312

06/25/07

Customer: BIMEX INC./ ROSELLE INTL

Ship to:

CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY

***** Duplicate Invoice *****

8 CS Broccoli			
Dole 14 count	@11.50	=	92.00
2 CS Broccoli Crowns			
Dole // Crowns	@13.00	=	26.00
2 CS Peppers, Yellow (11#)			
WHITE BOX/CANADIAN	@14.00	=	28.00
3 CS Peppers, Red (11#)			
veri fine	@8.00	=	24.00
1 CS Orange Peppers 11 lb.			
PERO	@12.00	=	12.00
1 CS Escarole			
JERSEY CRATE	@11.00	=	11.00
1 CS Endive			
JERSEY CRATE	@12.50	=	12.50
2 CS Boston Lettuce			
CA / RATTO	@13.00	=	26.00

Continued

FOR RESALE ONLY

Payment terms are 10 days.

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food and other products derived from these commodities and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to seller within eight (8) hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum) In the event legal action becomes necessary to collect the sums due under this invoice, buyer agrees to pay all costs of collection, including court costs and attorneys' fees.

TOTAL

JAB PRODUCE, INC.

"Top Quality Wholesale Produce"

2404 South Wolcott, Unit 23 Chicago, Illinois 60608
Phone (312) 226-7805 (312) 226-5154

Invoice: 614312

06/25/07

Customer: BIMEX INC./ ROSELLE INTL

Ship to:

CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY

***** Duplicate Invoice *****

1 CS Swiss Chard (Green)			
RATTO 24'S	@22.50	=	22.50
5 CS Green Onions			
Topless medium blue bo	@11.50	=	57.50
2 CS Spinach, Bunch			
Topless	@13.00	=	26.00
1 CS Carrots, Bunch			
Bolthouse 24 count	@20.00	=	20.00
1 CS Fennel			
OCEAN MIST 30'S	@18.00	=	18.00
1 CS Zucchini, YELLOW			
FNCY	@6.50	=	6.50

Pd. 68.50
bal. 313.50

~~382.00~~

FOR RESALE ONLY

Payment terms are 10 days.

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food and other products derived from these commodities and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to seller within eight (8) hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum) In the event legal action becomes necessary to collect the sums due under this invoice, buyer agrees to pay all costs of collection, including court costs and attorneys' fees.

TOTAL

JAB PRODUCE, INC.

"Top Quality Wholesale Produce"

2404 South Wolcott, Unit 23 Chicago, Illinois 60608
Phone (312) 226-7805 (312) 226-5154Invoice: 615373 06/29/07
Customer: BIMEX INC./ ROSELLE INTL
Ship to:

CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY

***** Duplicate Invoice *****

1	CS	Cukes Mini			
white box			@22.00	=	22.00
1	CS	Celery Hearts			
Nature's Reward Hearts			@24.00	=	24.00
1	CS	Cabbage, Red			
New Jersey / Crates			@14.00	=	14.00
1	CS	Cabbage, Savoy			
JERSEY			@14.00	=	14.00
3	CS	Carrots, Baby Whole 30/1#			
Bolthouse 30-1# baby			@23.50	=	70.50
1	SK	Radishes Bulk 40 lb.			
Oh / Dutch Maid			@19.00	=	19.00
2	CS	Dill - 60 Count			
CA / RATTO			@20.00	=	40.00
1	CS	Dandelion Greens - 24'S			
CA / RATTO			@22.50	=	22.50

Continued

FOR RESALE ONLY

Payment terms are 10 days.

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food and other products derived from these commodities and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to seller within eight (8) hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum) in the event legal action becomes necessary to collect the sums due under this invoice, buyer agrees to pay all costs of collection, including court costs and attorneys' fees.

TOTAL

JAB PRODUCE, INC.

"Top Quality Wholesale Produce"

2404 South Wolcott, Unit 23 Chicago, Illinois 60608
Phone (312) 226-7805 (312) 226-5154Invoice: 615373 06/29/07
Customer: BIMEX INC./ ROSELLE INTL
Ship to:

CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY

***** Duplicate Invoice *****

1	CS	Endive			
Topless			@12.00	=	12.00
1	CS	Escarole			
Topless			@12.00	=	12.00
1	CS	Eggplant, Baby			
Lakeside			@22.00	=	22.00
2	CS	Mushrooms, Portabello			
STK			@11.00	=	22.00
4	CS	Pickles - Choice			
New Jersey / Bushel			@16.00	=	64.00
3	CS	Spinach, Cello (8/10oz)			
PEAK			@7.50	=	22.50
1	CS	Swiss Chard (Green)			
OHIO / DUTCH MAID / 24'S			@22.00	=	22.00
1	CS	Swiss Chard (Red)			
RATTO 24'S			@22.75	=	22.75

Continued

FOR RESALE ONLY

Payment terms are 10 days.

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food and other products derived from these commodities and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to seller within eight (8) hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum) in the event legal action becomes necessary to collect the sums due under this invoice, buyer agrees to pay all costs of collection, including court costs and attorneys' fees.

TOTAL

JAB PRODUCE INC.

Top Quality Wholesale Produce

2404 South Wolcott, Unit 23 Chicago, Illinois 60608

Phone (312) 226-7805 (312) 226-5154

Invoice: 615373

06/29/07

Customer: BIMEX INC./ ROSELLE INTL

Ship to:

CLAIMS MUST BE MADE WITHIN 24 HOURS OF DELIVERY

***** Duplicate Invoice *****

1	CS	Sugar Snap Peas	@20.00	=	20.00
1	CS	Squash, Yellow fancy	@12.00	=	12.00
Farm Fresh					
1	CS	Finger Hots	@15.75	=	15.75
STOCK					
1	CS	Okra	@12.00	=	12.00
CRATE					

485.00

FOR RESALE ONLY

Payment terms are 10 days.

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food and other products derived from these commodities and any receivables or proceeds from the sale of these commodities until full payment is received.

Any claims for shortage, damage or condition will not be honored unless the problem is reported in writing to seller within eight (8) hours of receipt of the product and a timely USDA inspection is performed on the product. Interest shall accrue on any past due account balance at the rate of 1.5% per month (18% per annum) in the event legal action becomes necessary to collect the sums due under this invoice, buyer agrees to pay all costs of collection, including court costs and attorneys' fees.

TOTAL